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December 21, 2004

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: U.S. Patent Application Serial No. 09/349,737
Inventor: Shacklet, et al.
Filed: July 8, 1999
Attorney Docket No.: 99-40132-US (829544.20002)

Dear Sir:

Transmitted herewith for filing, please find the following in connection with the above-identified application:

1. Appeal Brief;
2. Check No. 408505 in the amount of \$250.00;
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The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment in the enclosed amount to deposit account #18-0586.

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Name: Edward F. Behm, Jr.

Signature [Signature]

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PHLLIB-757869.1-EFBEHM



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Shacklet et al. : Attorney Docket No.: 99-40132-US
Serial No.: 09/349,737 : Examiner: Christopher C. Pratt
Filed: July 8, 1999 : Art Unit: 1771
Title: FABRIC PADS WITH A PRINTED :
DESIGN AND A METHOD OF :
MAKING FABRIC PADS WITH A :
PRINTED DESIGN :

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The above-identified patent application comes before the United States Patent and Trademark Office Board of Appeals and Interferences from the Final Rejection of Claims 2-9, 14-19, and 63-75 by the Examiner in an Official Action mailed April 22, 2004. Pursuant to the Notice of Appeal filed October 22, 2004, set forth below is the Appellant's Brief. The requisite fee set forth in 37 C.F.R. 1.17(f) is enclosed.

* * *

EXPRESS MAIL CERTIFICATE (37 CFR 1.10)

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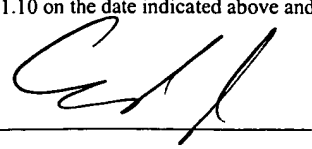
Signature 



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I. Real Party in Interest:

The real party in interest in the above-captioned application is National Label Company, organized and existing under the laws of Pennsylvania, and having a place of business at 2025 Joshua Road, Lafayette Hill, Pennsylvania. The application has been assigned to National Label Company by the inventors, Dean R. Shacklett, David Wallace, Neil G. Sellars, Richard Snyder, Gabriel Imhof and James Mundy.

II. Related Appeals and Interferences:

There are no appeals or interferences known to Appellant or Appellant's legal representative which will directly affect or be directly affected by or have a bearing on the Board's decision in this present appeal.

III. Status of Claims:

Claims 2-9, 14-19, and 63-75 were finally rejected under 35 U.S.C. §112 in the Office Action mailed April 22, 2004. Claims 2-9, 14-19, and 63-75 were finally rejected under 35 U.S.C. §103(a) in the same Office Action mailed April 22, 2004. Claims 2-9, 14-19, and 63-75 are the subject of the present appeal.

IV. Status of Amendments:

Amendments were not filed subsequent to the Final Rejection.

V. Summary of the Invention:

As recited in claim 74, the present invention is directed to a pad carrying liquid comprising, a piece of non-woven material absorbent to an amount of the liquid at least about 1.5 times a weight of said piece of material, the material being degradation resistant upon exposure to liquid over extended time, a first printed ink on a first surface of the piece of material, wherein the first ink comprises a vehicle selected from the group consisting of nitrocellulose,

polyamid, vinyl acrylic, shellac, and combinations of nitrocellulose, polyamid, vinyl acrylic and shellac, and wherein the first ink is substantially non-leaching due to the vehicle selected, a second printed ink on at least one of the first or a second surface of the piece of material, wherein the first ink is substantially in register with said second ink (See, especially, Figs. 1-2 and page 4, lines 14-21 of the specification).

Further, as recited in claim 63, the present invention is directed to a pad carrying liquid, comprising, a piece of non-woven material, wherein the piece of material is degradation resistant upon exposure to liquid over extended time, a first printed ink on a first surface of the material, wherein a vehicle for the first ink is selected from the group consisting of nitrocellulose, polyamid, vinyl acrylic, shellac, and combinations of nitrocellulose, polyamid, vinyl acrylic and shellac, a second printed ink on at least one of the first or a second surface of the material, wherein a vehicle for the second ink is selected from the group consisting of nitrocellulose, polyamid, vinyl acrylic, shellac, and combinations of nitrocellulose, polyamid, vinyl acrylic and shellac, wherein the first ink is substantially in register with the second ink, and wherein the first ink does not visibly leach through the piece of material or into the second ink, and wherein the second ink does not visibly leach through the piece of material or into the first ink. (See, especially, Figs. 1-2 and page 4, lines 14-21 of the specification).

VI. Issues:

ISSUE 1

Whether claims 2-9, 14-19, and 63-75 are rejected under 35 USC §112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention.

ISSUE 2

Whether claims 2-9, 14-19, and 63-75 are obvious over either U.S. patent No. 6,096,412 to McFarland et al. or U.S. patent No. 5,458,590 to Schleinz et al, in view of either Japanese patent JP-63091243A to Danippon, U.S. Patent No. 5,776,854 to Hayashi, U.S. Patent No. 6,161,928 to Morikawa and U.S. Patent No. 5,894,443 to Desie et al.

VII. Argument:

ISSUE 1

Whether claims 2-9, 14-19, and 63-75 are rejected under 35 USC §112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention.

Claims 2-9, 14-19, and 63-75 stand rejected under 35 USC §112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. Applicant respectfully maintains that the phrase “extended time” is definite. Applicant submits that this objection is overcome for at least these and the following reasons:

Applicant submits that it would be apparent to one skilled in the art that the phrase “extended time” as claimed is a matter of degree, and this phrase would be understood by one skilled in the art as being limited to non-fleeting periods of time, and would not include those fleeting periods of absorbency and durability over which the materials in the cited art, such as the diapers and paper towels in McFarland and Schleinz, would degrade. Further, the previously filed Information Disclosure Statement illustrates that fabrics, such as Sontara® fabrics, may be used repeatedly, thereby illustrating that the durability and absorbency of the fabric is maintained indefinitely, and, thus, for an “extended time”, unlike the materials of McFarland and Schlienz.

Applicant notes that the phrase “over extended time” refers to the time frame during which the claimed fabric resists degradation, and, as discussed herein, is thus limited to non-fleeting periods of time, and thus does not include fleeting periods of time in which degradation may occur, such as those in McFarland and Schleinz. Applicant respectfully submits that “extended time” is a term definite to those skilled in the art as meaning the length of time that a product might be exposed to a wet environment and necessitate non-degradation, such as in a medical container application. In such an instance, the fabric claimed must resist degradation for at least the shelf life of the product, which would be clear to one skilled in the art as a non-fleeting time period, but which would vary by the shelf life of the product in which the present invention is applied. Such a resistance to degradation during the usable shelf life period of a medication, for example, is clearly a claim limitation, and is a claim limitation definite to those skilled in the art in light of the non-limiting examples provided in the instant specification.

Applicant notes that, if one skilled in the art can assess the meaning of “extended time” without undo experimentation, the phrase is not indefinite. Orthokinetics v. Safety Travel Chairs

Inc., 1 USPQ2d 1081,1088 (CAFC 1986). This definiteness, if evident in the specification, does not require, as was requested in this Official Action, an actual reduction to practice, or experimental data. Id. The lack of any requirement to provide experimental data is particularly evident where, as in the instant case, specific examples are provided within the specification. Id. The non-limiting example discussed above would provide an definition of “extended time” adequate to enable one of ordinary skill to assess the limitations of the claim without undue experimentation.

Applicant has, at no point, asserted that the claimed invention will “never” degrade. Rather, Applicant respectfully submits that the exemplary fabric pad taught in the instant application, namely the Sontara® pad, is durable and tear-resistant, and hence is “degradation resistant,” even when wet, such as in the medical application taught in the instant invention, over “extended time”, such as the non-fleeting time period for which such fabric must soak in a medicine for a medicinal application. Consequently, Applicant respectfully submits that the property of durability over non-fleeting time periods is not relative, but rather is a function of, for example, the shelf life of a given application (e.g. a medicinal or other application), and thus this property does have a definite meaning, at least in light of the exemplary Sontara® fabric provided in the specification.

Further, Applicant is under no duty to engage in experimentation to assess a specific endpoint for the degradation of materials that may degrade at a time so extended into the future as to require extreme or extensive testing, nor is Applicant required to engage in experimentation that would lead to a lengthy wait to obtain a patent on the invention. *See, In re Wands*, 858 F.2d 731 (Fed. Cir. 1988). Rather, Applicant is entitled to rely on terminology consistent with the technical specifications of the materials used, which, as stated by Applicant previously, is what Applicant has done with respect to the fabrics and inks used, as evidenced by

the technical specifications previously submitted. *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372 (Fed. Cir. 2000). Applicant respectfully submits that Applicant has used the subject terminology in a manner that would be readily understandable to one skilled in the art and that is consistent with the common use of such terminology in the art, particularly in light of the reference materials available to one skilled in the art as cited by Applicant. Further, Applicant has defined these terms in such a way that the terms illustrate that the degradation characteristics of the subject medicinal pads and inks are patentably differentiable from the prior art. *See, Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565 (Fed. Cir. 1986). *See also, Shatterproof Glass Corp. v. Libbey Owens Ford Co.*, 758 F.2d 613 (Fed. Cir. 1985).

As such, Applicant thus respectfully submits that the above 35 U.S.C. §112 objection has been overcome and should be reversed by the Board.

* * * *

ISSUE 2

Whether claims 2-9, 14-19, and 63-75 are obvious over either U.S. patent No. 6,096,412 to McFarland et al. or U.S. patent No. 5,458,590 to Schleinz et al, in view of either Japanese patent JP-63091243A to Danippon, U.S. Patent No. 5,776,854 to Hayashi, U.S. Patent No. 6,161,928 to Morikawa and U.S. Patent No. 5,894,443 to Desie et al.

Claims 2-9, 14-19, and 63-65 stand rejected pursuant to 35 U.S.C. 103(a) as being unpatentable over McFarland or Schleinz in view of Danippon, Hayashi, or Morikawa and Desie. Applicant submits that these rejections are overcome for at least these and the following reasons:

Applicant respectfully submits that, in order to establish a prima facie 35 USC §103(a) rejection, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the reference teachings. MPEP 706.02(j). "The examiner can satisfy the burden of showing obviousness of the combination only by showing some objective teaching in the prior art, or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." (emphasis added) In re Sang Su Lee, 00-1158, (Serial No. 07/631,240) , (Fed.Cir.2002) citing In re Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed.Cir.1992). Further, to establish a prima facie 35 USC §103(a) rejection there must be a reasonable expectation of success. MPEP 706.02(j). Mere motivation is not sufficient. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and may not be based on Applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Official Action states that it would have been obvious to a person having ordinary skill in the art to utilize and/or combine the vehicles taught by Dainippon, Hayashi, and Morikawa into the dyes of McFarland and Schleinz, due to a motivation “to provide the ink with more uniform dispersion and improved mechanical strength.” However, Applicant respectfully notes that this motivation is not specifically from within the references, or specifically shown as being apparent to one of ordinary skill in the art. Applicant respectfully submits that a proper 35 USC §103(a) rejection requires not that the Examiner provide the Examiner’s motivation for the prior art combination asserted, but rather that the motivation from within the prior art itself be provided for the combination cited. MPEP § 2143.01; Al-Site Corp. v. VSI International, 174 F.3d 1308, 50 USPQ.2d 1161 (Fed. Cir. 1999); In re Fine, 837 F.2d 1071, 5 USPQ.2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ.2d 1941 (Fed. Cir. 1992). Applicant respectfully submits that the prior art does not provide any motivation for the cited combination, and that the only motivation provided to make the cited combination has been that of the Examiner.

Further, Applicant has submitted that the long felt need for a fabric pad having substantially non-bleeding ink that is degradation resistant over extended time has been resolved by the claimed invention. See Declaration of Dean Shacklett attached hereto in Section IX. Were a motivation provided to combine the ink and pad as claimed present in the prior art, such a combination would already have been made by those skilled in the art in order to meet this long felt need. Were there a reasonable expectation of success that this combination of cited art would meet this long felt need, presumably one skilled in the art would have already created such a combination. Thus, the lack of such a combination, in light of the long felt need, leads to a presumption that the present invention is not obvious. Therefore, Applicant again respectfully submits that no specific support has been provided to suggest that one of skill in the art would

have combined, or would have been motivated to combine, the references as set forth in the Official Action. Applicant again respectfully submits that, should the Examiner disagree, the Examiner provide specific support, from the prior art cited, that the motivation existed in the prior art to combine the references to meet the long felt need cited by Applicant.

The Federal Circuit, with regard to 35 USC §103(a) obviousness rejections, has made it clear that “[t]he need for specificity pervades.” See, e.g., In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed.Cir.2000) (“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner *claimed*” [emphasis added]). In the instant case, no specificity has been provided to support that one of skill in the art would have combined, or would have been motivated to combine, the relevant teachings of the references in the manner *claimed*, as has been repeatedly required by the Federal Circuit. “The factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority.” In re Sang Su Lee, (Fed.Cir.2002).

For example, the Examiner states that the combination of McFarland or Schleinz, and/or in Dainippon, Hayashi, or Morikawa, does not explicitly teach forming an image on both sides of a pad in register, but that Desie could be combined with this combination to make the requisite teaching, due to the fact that a skilled artisan “would have been motivated to select the printing process of Desie by the desire to achieve high quality printing at higher speeds”. Applicant respectfully submits that no such motivation is discussed anywhere in the cited art, nor is there discussed any suggestion that such a combination would have a reasonable likelihood of success. Desie discloses the use of electrostatic printing, which would not be operable with the inks and fabrics provided for in the present invention. Applicant respectfully submits that the printing

process provided by Desie would not provide a printed result that was substantially non-leeching and degradation resistant over extended time in a wet environment, and hence specifically teaches away from the invention as claimed. Desie would be inoperable, for example, in a medical application in which the printed pad was soaked for an extended period of time. Hence, Desie cannot be combined with the cited art. Rather, Desie teaches away from the use of the invention as claimed. Applicant respectfully submits that a Section 103 rejection is improper when the cited art references are specifically taught as non-combinable. MPEP § 2143.01; Al-Site Corp. v. VSI International, 174 F.3d 1308, 50 USPQ.2d 1161 (Fed. Cir. 1999); In re Fine, 837 F.2d 1071, 5 USPQ.2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ.2d 1941 (Fed. Cir. 1992).

Further, Applicant notes that the only motivation to make the claimed invention, other than Examiner's statements, appears to be within Applicant's own specification and claims, in direct contrast to the holding of In re Vaeck, discussed above. Such a combination could not and did not, due to a lack of a reasonable expectation of success, exist outside of Applicant's specification and claims, as evidenced by the long felt need for such a non-leeching ink and degradation resistant ink and pad combination discussed in the previously submitted Declaration of Dean Shacklett. Without a suggestion to combine and a reasonable expectation of success outside of Applicant's own specification and claims, Applicant respectfully submits that a claimed invention cannot be obvious based merely on an Examiner's assertion that it would have been "obvious [or desirable] to try." Amgen, Inc., v. Chugai Pharmaceutical. Co., Ltd., 927 F.2d 1200 (Fed.Cir.1991).

The Federal Circuit, in In re Sang Su Lee, 00-1158, (Serial No. 07/631,240), (Fed Cir. 2002), reversed a rejection based on a motivation to combine. "Bozek did not hold that common

knowledge and common sense are a substitute for evidence, but only that they may be applied to analysis of the evidence. Bozek did not hold that objective analysis, proper authority, and reasoned findings can be omitted ... Nor does Bozek, after thirty-two years of isolation, outweigh the dozens of rulings of the Federal Circuit and Court of Customs and Patent Appeals that determination of patentability *must be based on evidence.*" (emphasis added). Applicant respectfully submits that no objective evidence has been set forth in the Official Action as to any suggestion or motivation to combine the references as cited in the present Office Action, or that such a combination might present a reasonable expectation of success, and that this lack of evidence is adverse to the decision in Sang Su Lee.

Applicant thus respectfully submits that the skilled artisan would have found no motivation to combine the referenced teachings in the manner asserted, as the cited art itself provided neither a statement of such motivation, nor any evidence that such combination would have a reasonable likelihood of success. Applicant notes that the sole motivation provided appears to be that provided by the Examiner, not that provided in the prior art. Applicant respectfully requested that the Examiner provide some evidence in the prior art that such a motivation and reasonable expectation of success is present in the prior art. The Examiner has provided no such evidence.

Applicant submits that the previously submitted Declaration of Dean Shacklett suggests a long-felt need, addressed solely by the invention claimed in the instant application, as evidenced by the commercial success of the instant application. See Declaration of Dean Shacklett attached hereto in Section IX. Applicant notes Examiner's concern that no declarations have been provided from the requesting company of this pad, or by competitors in this field, in support of the Declaration of Dean Shacklett. A declaration is not required from all parties involved in the

existence of a long felt need, but rather is only required from a skilled artisan who has experienced the long felt need. 37 C.F.R. 1.132. As such, a declaration from a skilled artisan has been properly provided by Applicant. Applicant therefore respectfully submits that no further declaration is necessary. Further, Applicant respectfully submits that the Declaration does indeed provide evidence that the long felt need was persistent, as the Declaration, in combination with the lengthy history of prior art in this art provided in the Official Actions, evidences that while such art has existed for a very long time, the need filled by the claimed invention has never been met, nor has a motivation to combine art in the manner claimed to meet the need been specifically expressed in any cited art.

Further, Applicant notes that no teaching produced by the examiner suggests a combination of the specific inks and pads as claimed by Applicant or as averred in Applicant's Declaration. Teachings of the general use of inks and pads in the prior art that attempt to avoid leaching or degradation, and teachings that in actuality show the repeated failure of prior combinations to produce the desired characteristics, illustrate that the present invention as claimed is patentable, rather than unpatentable.

Wherefore, Applicant submits at least Claims 64 and 74 are patently distinguishable over the prior art of record. Applicant further submits each of Claims 2-10, 14-19, 64-73 and 75 is similarly distinguishable over the prior art of record, at least by virtue of each Claim's ultimate dependency from a patentably distinct base Claim 64 and 74.

In view of the foregoing discussion, it is respectfully submitted that the Examiner's rejection of claims 2-9, 14-19, and 63-75 is improper and should be reversed by the Board.

Respectfully submitted,

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By: 

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Dated: December 21, 2004



VIII. CLAIMS APPENDIX

1. (Cancelled)
2. The pad of claim 74, wherein the second printed ink is printed on the first surface and further comprising an additional printed ink on the second surface of the material and wherein the inks printed on the first and second surfaces are substantially in register with reference to the at least one common reference.
3. The pad of claim 2, wherein the printed inks on the first and second surfaces of the material form first and second designs and the first and second designs are substantially the same.
4. The pad of claim 74, wherein the material has a thickness of about 30 mils to 50 mils.
5. The pad of claim 74, wherein the material is a non-woven polyester.
6. The pad of claim 5, wherein the material has a density of at least about 2.5 oz. per square yard.
7. The pad of claim 5, wherein the material has a density of about 4 oz. per square yard.
8. The pad of claim 74, wherein the material is a polyester cellulose blend.
9. The pad of claim 8, wherein the material is about 45% polyester and about 55% cellulose.
10. The pad of claim 1, wherein the designs are printed with ink that is approved by the United States Food and Drug Administration.
11. (Cancelled)

12. (Cancelled)

13. (Cancelled)

14. The pad of claim 74, wherein each of the first and second inks is a non-carbon gravure ink.

15. The pad of claim 14 wherein the ink has a viscosity of about 17 to 30 seconds in a no. 2 Zahn.

16. The pad of claim 74, wherein said piece of material is substantially circular.

17. The pad of claim 3:

wherein the design on the first surface is substantially the same as the design on the second surface;

the material has a thickness of about 30 mils to 50 mils;

the designs are printed with ink that is substantially non-leaching;

the ink is a non-carbon gravure ink;

the ink has a viscosity of about 17 to 30 seconds in a no. 2 Zahn;

said piece of material is substantially circular.

18. The pad of claim 17, wherein material pad is a non-woven polyester having a density of about 4 oz. per square yard.

19. The pad of claim 17, wherein the material is about 45% polyester and about 55% cellulose.

20. (Withdrawn)

21. (Withdrawn)

22. (Withdrawn)

23. (Withdrawn)

24. (Withdrawn)

25. (Withdrawn)

26. (Withdrawn)

27. (Withdrawn)

28. (Withdrawn)

29. (Withdrawn)

30. (Withdrawn)

31. (Withdrawn)

32. (Withdrawn)

33. (Withdrawn)

34. (Withdrawn)

35. (Withdrawn)

36. (Withdrawn)

37. (Withdrawn)

38. (Withdrawn)

39. (Withdrawn)

40. (Withdrawn)

41. (Withdrawn)

42. (Withdrawn)

43. (Cancelled)

44. (Cancelled)

45. (Cancelled)

46. (Cancelled)

47. (Cancelled)

48. (Cancelled)

49. (Cancelled)

50. (Cancelled)

51. (Cancelled)

52. (Cancelled)

53. (Cancelled)

54. (Cancelled)

55. (Cancelled)

56. (Cancelled)

57. (Cancelled)

58. (Cancelled)

59. (Cancelled)

60. (Cancelled)

61. (Cancelled)

62. (Cancelled)

63. A pad carrying liquid, comprising:

a piece of non-woven material, wherein the piece of material is degradation resistant upon exposure to liquid over extended time;

a first printed ink on a first surface of the material, wherein a vehicle for the first ink is selected from the group consisting of nitrocellulose, polyamid, vinyl acrylic, shellac, and combinations of nitrocellulose, polyamid, vinyl acrylic and shellac;

a second printed ink on at least one of the first or a second surface of the material, wherein a vehicle for the second ink is selected from the group consisting of nitrocellulose, polyamid, vinyl acrylic, shellac, and combinations of nitrocellulose, polyamid, vinyl acrylic and shellac;

wherein the first ink is substantially in register with the second ink, and wherein the first ink does not visibly leach through the piece of material or into the second ink, and wherein the second ink does not visibly leach through the piece of material or into the first ink.

64. The pad of claim 63, wherein the second printed ink is printed on the first surface, and further comprising a third printed ink on the second surface of the material, wherein the inks printed on the first and second surfaces are substantially in register.

65. The pad of claim 64, wherein the printed inks on the first and second surfaces of the material form first and second designs, and wherein the first and second designs are substantially the same.

66. The pad of claim 63, wherein the material has a thickness of about 30 mils to 50 mils.

67. The pad of claim 63, wherein the material is a non-woven polyester.

68. The pad of claim 67, wherein the material has a density of at least about 2.5 oz. per square yard.

69. The pad of claim 67, wherein the material has a density of about 4 oz. per square yard.

70. The pad of claim 63, wherein the material is a polyester cellulose blend.

71. The pad of claim 63, wherein the inks are a non-carbon.

72. The pad of claim 63, wherein the inks have a viscosity of about 17 to 30 seconds in a no. 2 Zahn.

73. The pad of claim 63, wherein each of said first ink and said second ink comprise solvent based gravure inks.

74. A pad carrying liquid, comprising:

a piece of non-woven material absorbent to an amount of the liquid at least about 1.5 times a weight of said piece of material, said material being degradation resistant upon exposure to liquid over extended time;

a first printed ink on a first surface of said piece of material, wherein said first ink comprises a vehicle selected from the group consisting of nitrocellulose, polyamid, vinyl acrylic,

shellac, and combinations of nitrocellulose, polyamid, vinyl acrylic and shellac, and wherein said first ink is substantially non-leaching due to the vehicle selected;

a second printed ink on at least one of the first or a second surface of said piece of material;

wherein said first ink is substantially in register with said second ink.

75. The pad of claim 74, wherein said piece of non-woven material is selected from the group consisting of a polyester and a polyester cellulose blend.

IX. EVIDENCE APPENDIX



PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Shacklett et al.

United States

Application No: 09/349,737

Filing Date: July 8, 1999

For: FABRIC PADS WITH A PRINTED DESIGN
AND A METHOD OF MAKING FABRIC
PADS WITH A PRINTED DESIGN

Group Art Unit: 1771

Examiner: Christopher C. Pratt

Attorney

Docket No.: 99-40132-US

DECLARATION OF DEAN R. SHACKLETT

I, DEAN R. SHACKLETT, do hereby declare that:

1. I am a named inventor in the pending United States patent application entitled FABRIC PADS WITH A PRINTED DESIGN AND A METHOD OF MAKING PADS WITH A PRINTED DESIGN.

2. I was involved in receipt of a request for a fabric pad, having print thereon, as is presently claimed in the above-referenced patent application, and was informed by the requesting company, in the course of receipt of that request, that no such pad having print thereon, in registration, as claimed in the above-referenced application, was available in the known art, and that the requesting company, and competitors thereof, had long felt a need for such a pad, having print thereon, as claimed in the above-referenced application.

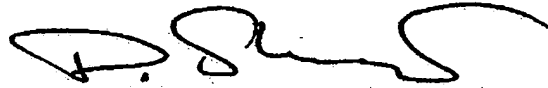
3. Production of a pad, having print thereon, in accordance with the invention as claimed in the above-referenced application, has proven commercially successful.

4. I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further

that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date:

July 30, 2002



Dean R. Shacklett